No. 3725.

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

In re Alfonso Cabrillos et Alias, an Infant; Louisa Cabrillos,

Appellant,

vs.

Emillio Angel and Chonita Angel, His Wife,

Appellees.

OPENING BRIEF OF APPELLANT.

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May It Please Your Honors:

The proposition presented is simple in form and not in the least difficult to state, viz.:

Can a citizen of the United States of immature age, through the medium of the laws of a state of the Union, be adopted by an alien, sojourning within the confines of such state?

The subject of this controversy is a born Subject of the United States of immature age. [Tr. 3-5.]

The respondents are aliens [Tr. 3-5] temporarily within the United States. [Tr. 49-51.]

It is admitted that the infant was adopted by the respondents in conformity to the law of California, viz., sections 221, 222, 227, 228 and 229 C. C., which sections are set out *in haec verba* in the petition for the writ. [Tr. 8-9.]

It is contended that the law of California creates a power when exercised is derogatory to the Constitution of the United States, more especially in violation of the XIV and XV amendments, and in violation of the law existing prior to such amendments; that such power when exercised does violence to the bill of rights and is shocking to the powers and duties of a SOVEREIGN NATION to its citizens.

The interpretation given by a state court is accepted by the Federal court and its validity is tested accordingly.

Olson v. Smith, 195 U. S. 341;
Mackenzie v. Hare, 165 Cal. 776.

The court of last resort of California has repeatedly declared as to the effect of a decree of adoption, interpreting the code sections, *supra:*

> "By adoption proceedings, however, the status of the child was wholly changed; it became *ipso facto* the child of another and ceased to sustain that relation in a legal sense to its natural parents."

Young v. Young, 106 Cal. 379.

> "Once we have reached that conclusion that the effect of an adoption under the code is to sub-

stitute the adopted parent for the parent by blood, we must give to that conclusion its logical result. FROM THE TIME OF THE ADOPTION, the adopting parent is, so far as concerns all legal rights and duties flowing from the relation of parent and child, the PARENT of the adopted child; FROM THE SAME MOMENT the parent by BLOOD ceases, in a legal sense, the parent—HIS PLACE has been taken by the ADOPTING PARENT."

Estate of Johnson, 164 Cal. 317.

"The effect of adoption was to establish the legal relation of parent and child, with ALL OF THE INCIDENTS and CONSEQUENCES."

Estate of Ballou, 181 Cal. 64, citing many former adjudicated cases.

"Upon the adoption of minors, they not only become members of the family of the adopted parents, but cease to be of the family of the natural parents."

Estate of Pillsbury, 58 Cal. Dec., 166 Pac. 11.

"After such adoption the residence of the child was that of those who adopted him."

Estate of Taylor, 131 Cal. 180.

"RIGHT OF HUSBAND, AS HEAD OF FAMILY. The husband is the head of the family. He may choose any reasonable place or mode of living. * * *"

Sec. 156, C. C. California.

"Right of parent to determine residence of child. A parent entitled to the custody of a child has a right to change his residence. * * *"

Sec. 213, C. C. California.

REMEDY.

"If the Juvenile Court proceedings are void and the child illegally detained from its parents, its possession may be obtained by *habeas corpus* proceedings."

In re Cozza, 163 Cal. 516.

NO ESTOPPEL.

The natural parents cannot be estopped by acquiescence in the claim of the adopting parents for several years and they may assert their right for the custody of the child—as in this case by *habeas corpus.*

Ex parte Clark, 87 Cal. 638.

Section 222, Civil Code of California, viz.:

"WHO MAY ADOPT. The person adopting must be at least ten years older than the person adopted."

Was it not intended and should it not be read into this section, THE PERSON ADOPTING MUST BE A CITIZEN OF THE UNITED STATES?

Can a court acquire jurisdiction in an adoption proceeding without an averment in the declaration to the effect that the PERSON or PERSONS seeking to adopt are citizens of the United States?

Under the law of California, a white child can be adopted by a colored family, a Chinaman or Jap might adopt a free-born American, white, citizen minor; the unspeakable Turk could adopt the fair, free-born, female American citizen child.

> "Regardless of whatever reason may be given or the power invoked to sustain the act of a state, if the act is one which TRENCHES directly upon that which is exclusive within the jurisdiction of the national Government, IT CAN NOT BE SUSTAINED."
>
> Brennan v. Titusville, 153 U. S. 299.

In the language of CHIEF JUSTICE TANNEY:

> "That for all great purposes for which the GOVERNMENT was established, we are one people, one common country. We are all CITIZENS OF THE UNITED STATES."

For this reason the court decided the cause of Crandall v. Nevada, 73 U. S. (6 Wall. 36).

If a state seek to abridge the rights of a citizen such claim is contrary to the Constitution of the United States. The existence of such a power in the state is therefore inconsistent with the objects for which the Federal Government was established. An exercise of such power is accordingly void.

> Crandall v. Nevada, *supra,* citing therein Brown v. Maryland and McColough v. Maryland.

> "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders

judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.

"Everything which may pass under the form of enactment is not, therefore, to be considered the law of the land."

(Webster in) Dartmouth College v. Wodward, 4 Wheaton 579.

"Personal liberty consists of the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct without imprisonment or restraint, unless by due process of law."

1 Blackstone Com. 134.

A citizen of the United States in restraint of his liberty or locomotion may be delivered therefrom by *habeas corpus* in the proper Federal court.

In re Yung Sing Hee, 36 Fed. 437;
Ex parte Chin King, 35 Fed. 354.

The duty of the state to protect all of its citizens in the enjoyment of equal rights was original by the state and it still remains there. The obligation by the Fourteenth Amendment resting upon the United States is to see that the state do not deny this right. This amendment guarantees no more.

LeGrand v. U. S., 12 Fed. 145.

The Fourteenth Amendment embraces every line of cases where there may be a wrong.

San Mateo County v. S. P. Ry., 13 Fed. 145.

The Federal court, speaking with reference to the Civil Rights Bill, says of this act:

> "This section throws wide open the doors of the Federal court, as the altar of justice—the place of refuge."
>
> Tuchman v. Welsh, 42 Fed. 548.

> Fourteenth Amendment: "Nor shall any state deprive any citizen of life, liberty or property without due process of law." This reference "goes against any part of the legal machinery of the state as well as the whole of it."
>
> *In re* Monroe, 46 Fed. 52.

An American woman married to a foreigner is a striking example of losing citizenship.

The act of March 2, 1907 (34 U. S. Stats. 1228) is declaratory as to the woman thus marrying at once assumes the status of her husband.

A woman who thus marries in the state of California loses her right to sufferage.

> Mackenzie v. Hare, 165 Cal. 776.

It also lays down the doctrine that it is immaterial whether the alien is permanently located in that state and continues to reside therein, nevertheless the woman forfeits her right of franchise.

This decision also recognizes all that has been hereinbefore said as to the control exercised by the Constitution of the United States and the doctrine laid down by Federal courts.

The common law did not recognize the adoption of children. Our law seems to follow the Roman law. (Morse Cit. Sec. 40, *id.* 75.) The adopted takes the nationality of the adopting father. (*Id.* 22.) It was the indelible law of Rome, when citizenship was once acquired, the people could deprive such citizen of property, liberty, life, but NEVER OF CITIZENSHIP, without his consent. (*Id.* 104.)

Every nation has its nature and principles and its decay begins with the destruction of its principles. (*Id.* 185.)

Married women assume the status of their husbands—so do the children; husband has the right to change the domicile; so does the guardian as to his ward. (*Id.* 106.) Citing Parson on Citizenship 645.

Inhabitants are distinguished from citizens. Foreigners are permitted to establish their residence. Bound by their abode in the country to society, they are subject to the laws of the state while they remain in it, although they do not participate in all the rights of citizens.

Wheaton Int. Law 872;
Morse Cit. 27.

The national character of an individual is determined by its birth or ties of parentage—and this constitutes the nationality of citizens; or by naturalization in another country, which creates nationality by acquisition.

Morse Cit. 26.

Ties of parentage by the decree of adoption, as in the case at bar, have been created by the decree of adoption.

Citizens enjoy civil rights and all the privileges; inhabitants enjoy civil rights only; citizenship in its narrowest sense confers imprescriptive right to SPEAK FOR THE COMMUNITY, TO ACT AS ITS AUTHORITIVE EXPONENT.

Morse Cit. 6.

ARISTOTLE defines a citizen to be one who is a partner in the LEGISLATIVE and JUDICIAL POWER, one who shares in the HONORS OF STATE; while he who has no part is a sojourner.

LORD PALMERSON says:

No government, for example, will allow one of its subjects living in a foreign country to be brought under the law for levying of conscription there, and be compelled to serve in the army of the foreign state.

It is the consent of the individual, not of the country of which he is a native, * * * that works a change of nationality.

Morse Cit. Sec. 32.

The right of a citizen to expatriate himself is recognized by the second section of the act of March 2, 1907; the exception being:

> "*And provided also*, that no American citizen shall be allowed to expatriate himself when this country is at war."

Yet by this record [Tr. 28], on June 21st, 1919, at a time when this nation was at war, the state of California saw fit to, and did, cause one of its native-born male citizens to be adopted by an alien.

Fealty and defense of state are demanded of citizens.

It is the duty of the state to protect its citizens.

Is this not the time, the place and the duty of the court to intervene and protect one of its citizens, who on account of immature age is unable to protect himself?

What are the duties of the United States toward this infant of less than three years of age?

Respectfully submitted,

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